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S/n
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WESTERN DISTRICT OF LOUISIANA
LAFAYETTE, LOUISIANA

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE KANSAS CITY SOUTHERN
RAILWAY CO.,

Defendant.

1:07-CV-1793

ALEX

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this Complaint and alleges as follows:

NATURE OF THE ACTION

1. This is a civil action for injunctive relief and recovery of costs under Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") Sections 106(a) and 107, 42 U.S.C. §§ 9606(a) and 9607. The United States seeks injunctive relief to remedy conditions in connection with the release or threatened release of hazardous substances into the environment at the Ruston Foundry Superfund Site, encompassing approximately 6.6 acres, located at 1010 Bogan Street in Alexandria, Rapides Parish, Louisiana ("the Site"). The United States also seeks to recover unreimbursed costs incurred, and to be incurred, for response activities at the Site.

COPY

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action, and the Defendant, pursuant to CERCLA Sections 106(a), 107(a) and 113(b), 42 U.S.C. §§ 9606(a), 9607(a) and 9613(b), and under 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this District under CERCLA Sections 106(a) and 113(b), 42 U.S.C. §§ 9606(a) and 9613(b), and 28 U.S.C. § 1391, because the claims arose, and the threatened and actual releases of hazardous substances occurred, within this judicial district.

DEFENDANT

4. Defendant The Kansas City Southern Railway Company ("KCSR") is a corporation organized and incorporated under the laws of the State of Missouri that is registered to do business in Louisiana.

5. Louisiana and Arkansas Railway Company was a corporation organized and incorporated under the laws of the State of Delaware and merged into KCSR in 1993. KCSR succeeded to all liabilities of Louisiana and Arkansas Railway Company in connection with the Site.

6. KCSR is a "person" within the meaning of CERCLA Section 101(21), 42 U.S.C. § 9601(21).

7. Louisiana and Arkansas Railway Company was a "person" within the meaning of CERCLA Section 101(21), 42 U.S.C. § 9601(21).

GENERAL ALLEGATIONS

8. The Site is an abandoned metal foundry ("Ruston Foundry") that operated from 1908 until 1985 and is located on the southeast side of Alexandria, Rapides Parish, Louisiana.

9. Ruston Foundry operated from 1908 until 1985. From the beginning of operation until October 1983, it was operated under the name Ruston Foundry and Machine Shops, Ltd. In 1983, the facility was reincorporated and began operating under the name Ruston Foundry and Machine Shops, Inc. In November 1990, the Ruston Foundry and Machine Shops, Inc. corporation charter was revoked by the Louisiana Secretary of State for failure to file its corporate annual report.

10. Foundry operations resulted in metals-contaminated waste which was dispersed throughout the property as fill material. As a result of this disposal activity, foundry-derived process wastes (slag, foundry sand piles, metal scrap, and castings) cover most of the Site and have contaminated the soil. Contaminants are found in the canal sediments and surface water due to runoff of Site materials. Source materials in the form of drums of sludge were removed from the Site as part of a removal action in 1999.

11. Louisiana and Arkansas Railway Company owned land which it leased during the period 1909 to 1974 to the Ruston Foundry and Machine Shops, Ltd. for construction of tracks and for use in foundry operations.

12. The land leased by Louisiana and Arkansas Railway Company comprises approximately one third of the Site.

13. In 1974, Louisiana and Arkansas Railway Company sold the land it had leased to Ruston Foundry and Machine Shops, Ltd.

14. During Site investigation, soil contaminated with hazardous substances including lead and antimony was found throughout the Site, including the portion formerly owned by Louisiana and Arkansas Railway Company.

15. Louisiana and Arkansas Railway Company owned or operated a portion of the Site at the time of disposal of hazardous substances.

16. The Site was added to the National Priorities List ("NPL") effective June 9, 1999. 64 Fed. Reg. 24949 (1999). The NPL was established pursuant to CERCLA Section 105(a), 42 U.S.C. § 9605(a), and is found at 40 C.F.R. Part 300, Appendix B. The NPL is a list of those sites at which there are releases of hazardous substances and which EPA has ranked as having the highest priority for remediation or other response action among all nationally identified releases, based on relative risk or danger to public health, welfare or the environment.

17. A Remedial Investigation and a Feasibility Study for the Site were completed in 2002.

18. Surface soil and sediment at the Site are contaminated with lead and antimony

19. Lead and antimony are hazardous substances as defined in CERCLA Section 101(14), 42 U.S.C. § 9601(14), and further listed at 40 C.F.R. § 302.4.

20. EPA issued a Record of Decision for the Site on June 24, 2002. The Record of Decision selected a remedy for contamination at the Site under which the principal threat waste at the Site would be addressed through the excavation and offsite disposal of contaminated soil and sediment, removal and offsite disposal of asbestos containing material and the underground storage tank, and the excavation, treatment, and offsite disposal of hazardous wastes. Based on the City of Alexandria's Future Reuse Plan, the Record of Decision assumed that future Site reuse would be recreational.

21. After the Record of Decision was issued, the City of Alexandria changed the proposed future land use for the Site from recreational to industrial.

22. EPA issued an Explanation of Significant Differences for the Site on September 28, 2004. Based upon the revised land use for the Site, the Explanation of Significant Differences modified the remedy selected in the Record of Decision by revising the soil/sediment cleanup levels and the volume of waste to be addressed. The Explanation of Significant Differences also added a contingency remedy, excavation and offsite disposal, to the overall remedial approach set forth in the Record of Decision.

23. The United States has incurred response costs of removal and remedial actions not inconsistent with the National Contingency Plan in connection with the Site. As of January 31, 2006, these costs totaled at least \$4,343,435.24.

24. The United States anticipates that it will continue to incur costs of removal and remedial actions not inconsistent with the National Contingency Plan in connection with the Site.

25. The Site is a "facility" within the meaning of CERCLA Section 101(9), 42 U.S.C. § 9601(9).

26. Actual and threatened "releases" of hazardous substances into the environment, within the meaning of CERCLA Section 101(22), 42 U.S.C. § 9601(22), have occurred and will continue to occur at and from the Site.

FIRST CLAIM FOR RELIEF

27. Paragraphs 1-26 are realleged and incorporated herein by reference.

28. CERCLA Section 106(a), 42 U.S.C. § 9606(a), provides in pertinent part that:

In addition to any other action taken by a State or local government, when the President determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, he may require the Attorney General of the United States to secure such relief as may be necessary to

abate such danger or threat, and the district court of the United States in the district in which the threat occurs shall have jurisdiction to grant such relief as the public interest and the equities of the case may require.

29. By Executive Order 12580 of January 23, 1987, the President's functions under CERCLA Section 106(a), 42 U.S.C. § 9606(a), have been delegated to the Administrator of EPA.

30. EPA has determined that there is or may be an imminent and substantial endangerment to the public health or welfare or the environment because of actual or threatened releases of hazardous substances from the Site.

31. KCSR liable for the injunctive relief to which the United States is entitled at the Site under CERCLA Section 106(a), 42 U.S.C. § 9606(a).

SECOND CLAIM FOR RELIEF

32. Paragraphs 1-26 are realleged and incorporated herein by reference.

33. CERCLA Section 107(a), 42 U.S.C. § 9607(a)(2), provides in pertinent part that:

(2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of, . . . shall be liable for –

(A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan. . . .

34. The United States has incurred and will continue to incur costs of removal and remedial actions not inconsistent with the National Contingency Plan in response to the release or threatened release of hazardous substances at and from the Site, within the meaning of CERCLA Sections 101(23), (24), and (25), 42 U.S.C. §§ 9601(23), (24), and (25).

35. As the successor in interest to Louisiana and Arkansas Railway Company, the owner and/or operator of the Site at the time of disposal of hazardous substances, KCSR is

jointly and severally liable to the United States for all response costs, including the costs of removal and remedial actions, incurred and to be incurred by the United States with respect to the Site, plus interest, pursuant to CERCLA Section 107(a), 42 U.S.C. § 9607(a).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, respectfully requests that the Court:

1. Order Defendants to abate the threat posed by the release or threatened release of hazardous substances by performing the remedy selected by EPA in the Record of Decision as amended by the Explanation of Significant Differences;
2. Award the United States a judgment against Defendants for all costs incurred by the United States in connection with the Site, plus interest; and
3. Award the United States a declaratory judgment, pursuant to CERCLA Section 113(g)(2), 42 U.S.C. § 9613(g)(2), that Defendants are liable for all future costs incurred by the United States in connection with the Site.

Respectfully submitted,

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